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Letter dated 28 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 14 August 2002 (S/2002/958). The Counter-Terrorism Committee has received the attached second report from Benin submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Note verbale dated 28 April 2005 from the Permanent Mission of Benin to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Benin to the United Nations presents its compliments to the United Nations and has the honour to transmit the attached second report of Benin on measures taken in implementation of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

[Original: French]

Second report of the Republic of Benin in implementation of Security Council resolution 1373 (2001) on counter-terrorism

Subparagraph 1 (a)

Legal or other measures to prevent and suppress the financing of terrorist acts

In implementation of the International Convention for the Suppression of the Financing of Terrorism (New York, 1999), Benin has integrated the suppression of the financing of terrorism in all its forms into its positive law.

The draft Penal Code stipulates in article 567 bis, paragraph 2, that the procedure for freezing, seizure or confiscation of assets belonging to or intended for a terrorist group or derived from a terrorist act shall be that provided under the Act on capital.

Currently, no specific act in Benin's legislation requires the notary or attorney to report the fraudulent origin of suspicious transactions.

By Decree No. 2004-359 of 24 June 2004, the Government of Benin submitted to the National Assembly the anti-money-laundering bill, essentially a community text valid in all the States members of the West African Economic and Monetary Union (WAEMU). The bill covers the definition, prevention, detection and suppression of money-laundering.

The implementation of the law happens through the signing of the decree establishing the National Financial Information Processing Unit (CENTIF), after the adoption and promulgation of the above-mentioned Act, that will enable close cooperation between CENTIF and administrative and judicial bodies in seeking evidence regarding money-laundering activities, the imposition of administrative and disciplinary measures and criminal penalties.

The repressive provisions of the Act concern investigative measures, the lifting of professional secrecy, administrative and disciplinary sanctions, interim measures of protection by the State (seizure or confiscation of assets relating to the violation), freezing of assets and financial operations concerning such assets, prison sentences of three to seven years and fines equal to three times the amount of the assets or funds that were the subject of the money-laundering operation.

Attempted money-laundering is punishable by the same sentence and, in the presence of aggravating circumstances, these sentences are doubled.

Furthermore, a new counterfeiting act was adopted by the Parliament during October 2003.

Thus all economic offences likely to be used to launder money are increasingly becoming a subject of concern to the Government of Benin.

Subparagraph 1 (b)

The legal measures taken by Benin for the suppression of terrorism are:

- Review of the regulations concerning transfer of funds abroad in the WAEMU area in the context of the Convention for the Suppression of the Financing of Terrorism.
- In those regulations, henceforward neither the State nor individuals may transfer funds for the benefit of private individuals. The new law requires that deposits must be made on behalf of legal persons duly registered with the competent body.

Subparagraph 1 (c)

1. At the administrative level, CENTIF may, based on serious and reliable reports in its possession which can be corroborated, oppose the execution of a transaction within the deadline mentioned by the declarer.

2. In the legal area (investigative measures), the examining magistrate may order various actions, in accordance with the law, for a fixed time period, without professional secrecy being invoked, in particular:

- The monitoring of bank accounts and similar accounts, when there are serious indications giving reason to suspect that they are being utilized or could be utilized for operations connected to the original infraction or other infractions under the law.
- Access to network systems and computer servers utilized or likely to be utilized by individuals when there are serious indications of their participation in the original infraction or other infractions under the law.
- The communication of authentic or private instruments and banking, financial and commercial documents.

It may also order the seizure of the above-mentioned instruments and documents.

The examining magistrate may order interim measures of protection, in accordance with the prevailing law, at State expense, in particular the seizure or confiscation of assets related to the infraction which is under investigation and any evidence allowing them to be identified, as well as freezing of sums of money and financial operations having to do with those assets.

The lifting of these measures may be ordered by the examining magistrate under the conditions provided by law.

Subparagraph 2 (a)

The draft Penal Code provides for the suppression of terrorism in all its forms, in implementation of the United Nations conventions to which Benin is a party.

Important legal measures concerning weapons have been taken:

1. The law governing the sale, manufacture, possession, transport and stockpiling of weapons within Benin is Decree No. 61-31/PR/M1/AM of 7 February 1961 concerning the weapons and ammunition regime in the Republic of Benin.

In application of this Decree, each year the Minister of the Interior draws up an order establishing the quota of advanced weapons that may be authorized for import.

It should be noted that the provisions of the above-mentioned Decree do not allow an effective response to the policy of combating the proliferation of light weapons to which Benin has adhered through its participation in the ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons.

For this reason, the Government has just introduced a bill to harmonize its administrative and legislative measures with those of other member countries of ECOWAS under the Programme for Coordination and Assistance for Security and Development (PECASED).

As for legal measures on explosives, their import and sale are governed by a State monopoly granted to the Ministry of Mines, Energy and Hydraulics (MMEH).

The legislation in this area consists in the following:

- The code on explosives;
- Decree No. 99-281 of 21 May 1999 on approval of the statute of the Benin Office of Geographic and Mining Research (OBRGM);
- Order No. 032/MMEH/DC/CTMII/OBM/DDM of 17 November 1992 amending Order No. 115/MTPT/DMGM of 22 November 1973 granting the State monopoly for the import and sale of explosives in the Republic of Benin to the Office of Mines, Geology and Hydrocarbons.

The bill establishing the weapons and ammunition regime which was under study by the National Legislation Commission in September 2004 governs the issue.

2. Controlling the proliferation of light weapons.

Control takes place on two levels:

(a) The category of advanced weapons

In this category, imports are regulated by the above legislation. Owners are known, registered and monitored.

(b) Locally produced weapons

The Commission undertook a census of local weapons manufacturers in the country in order to regulate their activities.

3. Articles 90 and 91 suppress and define terrorist acts.

Article 90 — The following infractions, when they are related to an individual or collective action for the purpose of seriously undermining public order through intimidation or terror, constitute acts of terrorism:

1. Voluntary attacks on life, integrity of the person, abduction and kidnapping, hijacking of an aircraft, ship or any other means of transport;

2. Theft, extortion, destruction, degradation and damage, as well as computer-related offences;

3. The manufacture or possession of lethal or explosive machines or devices;

4. The production, sale, importation or exportation of explosives;

5. The acquisition, possession, transport or illicit carriage of explosives or explosive devices;

6. Possession, carriage or transport of weapons of war and munitions;

7. The development, manufacture, possession, stockpiling, acquisition and transfer of biological or toxic weapons.

Article 91 — The act of introduction into the atmosphere, soil or subsoil or waters, including territorial waters, of a substance that can endanger the health of humans or animals or the environment also constitutes an act of terrorism when it is linked to an individual or collective endeavour to cause serious disruption to public order through intimidation or terror.

4. Articles 92 to 94 contain the related penalties.

Article 92. All acts of terrorism are subject to the death penalty.

Article 93. Any person attempting to commit an act of terrorism is exempt from punishment if, having warned the administrative or judicial authorities, that person has been able to prevent the commission of the offence and to identify the other perpetrators, if any.

Article 94. The sentence of imprisonment imposed on the perpetrator of an act of terrorism or his accomplice shall be reduced by half if, by warning the administrative or judicial authorities, he has made it possible to terminate the criminal activity or to prevent the offence from causing death or permanent injury and to identify other perpetrators, if any. When the sentence imposed is life imprisonment, it shall be reduced to a term of 20 years.

Subparagraph 2 (d)

Preventing the use of the territory of Benin to commit terrorist acts from abroad.

- The Constitution;

- Conventions (ECOWAS, African Union, United Nations, etc.)

Subparagraph 2 (e)

The jurisdiction of the courts regarding acts committed outside Benin by a citizen or permanent resident of Benin and acts committed by a foreigner currently in Benin is covered in Title IX of the Code of Criminal Procedure, articles 553, 554 and following.

Title IX: Crimes and offences committed abroad

Article 553 — Any citizen of Benin who is outside the territory of the Republic and is found guilty of an act considered to be criminal under Beninese law may be tried and sentenced in Beninese courts.

Any citizen of Benin who is outside the Republic and is found guilty of an act considered to be criminal under Beninese law may be tried and sentenced in Beninese courts, if the act is punishable under the laws of the country where it was committed. In the case of an offence against the security of the State, counterfeiting

of the State seal or the national currency in circulation, the offence committed outside the territory of the Republic shall be punishable on the same basis as an offence committed in its territory.

The provisions of paragraphs 1 and 2 are applicable to persons who have acquired Beninese citizenship only after the commission of offence with which they are charged.

Article 554 — Anyone who, in the territory of the Republic, becomes an accomplice to a crime or offence committed abroad may be tried and sentenced by Beninese courts, if the act is punishable under both Beninese and foreign law, on the condition that the criminal act or offence has been definitively proved by the foreign court.

Subparagraph 2 (f)

1. Concerning the procedures for mutual assistance in criminal investigation, the procedure instituted either bilaterally or multilaterally shall be followed (either the procedure by the Attorney-General or that of the International Criminal Police Organization (Interpol)).

2. Extradition is governed by bilateral and multilateral agreements:

- Bilateral agreements on judicial assistance, letters rogatory and extradition between Benin and another country (Agreement on cooperation in justice matters between France and Dahomey).
- Multilateral agreements are agreements signed by several countries (Convention A/P 1/792 concerning mutual legal assistance in criminal matters (ECOWAS).

Subparagraph 2 (g)

There exists in the Republic of Benin Act No. 97-025 of 18 July 1997 on the control of drugs and precursors, which provides for the control of production, suppression of illicit trafficking in drugs and precursors and, when necessary, the suppression of laundering of money derived from such trafficking.

Act No. 97-025 stipulates in its second part "the suppression of the illicit production and trafficking of controlled substances and measures against the abuse of narcotics and psychotropic substances".

Indeed, concerning high-risk drugs, dangerous drugs or precursors, there are prison sentences ranging from 1 to 20 years and fines from 100,000 to 5 million CFA francs in cases of:

- Cultivation, production and manufacture;
- Trafficking;
- Facilitation of use;
- Dealing or selling for personal consumption;
- Money-laundering;
- Incitement to violations and illicit use;

– Attempts, association and agreements;

– Complicity.

These sentences can be doubled when there are aggravating circumstances.

This Act provides additional or supplementary penalties and measures and special procedures regarding:

– Obligatory confiscation of plants and substances seized;

– Proceeds derived from the offence;

– Facilities, materials and equipment, real estate or other assets used in the commission of the offence;

– Seizures, searches, monitoring in the postal service, detection through the use of medical investigation techniques;

– Surveillance of deliveries;

– Special investigations and measures intended to facilitate the detection of money-laundering;

– Temporary or permanent closure of commercial or other firms and temporary or permanent prohibition of entry, etc.

In application of this Act, four (4) implementing regulations have been adopted:

– Decree No. 99-141 of 15 March 1999 on the establishment and functions of the Central Office against Illegal Drug Trafficking (OCERTID), which has a role in prevention, detection and investigation of trafficking in narcotics and laundering of the profits gained from such activities; OCERTID should especially support and coordinate the actions of the police, the gendarmerie, customs and the forest service and cooperate with all national or international institutions with the same objectives;

– Decree No. 99-162 of 8 April 1999 on the establishment, composition, duties and operations of the Interministerial Committee to Combat Abuse of Narcotic Drugs and Psychotropic Substances (CILAS), aimed at coordination and management of government policy in combating illicit trafficking and drug abuse;

– Order No. 0057 of 5 March 1999 establishing within the Directorate of the Judicial Police an anti-money-laundering unit, which plays a role in detection and investigation intended to defeat the clandestine financial circuit and money-laundering;

– Interministerial Order No. 0119 of 14 May 2003 establishing [omission in the text];

– It should be noted that Act No. 97-025 on drugs and precursors was examined in a national seminar in 2003 with a view to updating it.

Subparagraph 3 (d)

1. Benin's participation in international instruments against terrorism and transnational organized crime.

2. Benin has ratified the following conventions and protocols;

- Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection;
- United Nations Convention against Transnational Organized Crime and its three Additional Protocols; 1 March 2004;
- International Convention against the Taking of Hostages; accession 1 March 2004;
- International Convention for the Suppression of the Financing of Terrorism.

Subparagraph 3 (g)

Extradition is governed by the Act of 10 March 1927. If the conditions are met, the suspect is extradited. This is necessarily a judicial decision under the jurisdiction of the indictment division of the Appeals Court.

Benin participates in the efforts of the international community to prevent and combat terrorism at several levels:

1. **At the international level**

With the United Nations

Benin participated actively in the elaboration of the Convention against Transnational Organized Crime and its Additional Protocols, signed them on 13 December 2000 in Palermo and ratified them on 1 March 2004.

The work of internalizing them is nearing completion. Technical support from the United Nations Office on Drugs and Crime (UNODC) at Vienna made this possible, along with its participation in the Bamako Seminar of November 2003.

With the International Atomic Energy Agency (IAEA)

Benin participates regularly in seminars held by IAEA on strengthening of the safeguards system, nuclear security, non-proliferation of nuclear weapons, physical protection of nuclear materials, management of radioactive waste, etc.

Benin requested assistance for the implementation of legal instruments on protection against nuclear terrorism.

With the Organization for the Prohibition of Chemical Weapons

As a party to the Convention on the Prohibition of Chemical Weapons, Benin, which considers chemical weapons to be weapons of mass destruction, participates in meetings organized by the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons on various aspects of the development, manufacture, stockpiling and use of chemical weapons and their destruction.

2. **At the regional level**

Benin ratified the OAU Convention on the Prevention and Combating of Terrorism on 1 March 2004. With the support of the International Organization of la Francophonie (OIF), it also took part in the Cairo regional seminar in early September 2003.

3. **At the subregional level**

Benin participates actively in the efforts of ECOWAS and WAEMU in West Africa.